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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,214	01/23/2004	Edward A. Zumbiel	RWZ/77	9137
26875	7590	04/26/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,214

Applicant(s)

ZUMBIEL ET AL.

Examiner

Paul Durand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the RCE filed 4/5/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/23/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/2006 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3,5,7,8 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Rhodes et al. (US 6,631,803).

In regard to claims 1,3,8 and 21, Rhodes discloses the invention as claimed including producing a carton substrate 31, over wrapping the carton substrate with a film 29, such that the entire film registers with the carton, scoring a portion of the film proximate the convenience feature in the form of handles 26 and lid 22, wherein the scored portion of the film becomes part of the convenience feature when accessed by the user, erecting the carton, with the convenience features accessible to the user form

they exterior of the carton, filling the carton with items "C", such that each of the items are substantially bounded by the carton (see entire document).

In regard to claim 2, Rhodes discloses the invention as claimed including a dispenser in the form of lid 22 and handle 26.

In regard to claim 5, Rhodes discloses the invention as claimed including the over wrap covering the entire carton.

In regard to claim 7, Rhodes discloses the invention as claimed including the convenience feature accessible from the outside of the carton, without removing any items.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 6,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes.

In regard to claim 6, Rhodes discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 9 and 10, Rhodes discloses the invention substantially except for the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view Littmann (US 5,229,180).

Rhodes discloses the invention substantially as claimed as applied to claim 1, except for the use of laser or die to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Rhodes with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

8. Claims 1,2,5-7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. (US 5,329,747) in view of Chapman et al (US 3,111,221).

In regard to claims 1 and 2, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap (no number given), such that substantially the entire film registers with a portion of the carton, and singly scoring a portion of the film proximate the convenience feature in the form of a cutout, which allows access to the convenience feature (see entire document).

What Williams does not disclose is the use of a scored convenience feature comprised of multiple cuts. However, Chapman teaches that it is old and well known in the art of packaging to provide a scored openings 54 in a film 42, which may be scored before or after the film is applied to the grouped items 11-16, held together by spacer 34 for the purpose of allowing access to the convenience features 52 (see Fig.1 and C2,L3-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the

scoring means as taught by Chapman for the purpose of allowing access to the convenience features.

In regard to claim 5, Williams discloses the invention as claimed including covering the entire carton 10 with the film (see Fig.1).

In regard to claim 7, Williams discloses the invention as claimed including accessing the convenience feature without removing any items from the carton.

In regard to claim 6, Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 9 and 10, Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Williams does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 11 and 12, Williams discloses the invention as claimed including scoring the film after it is on the carton (see C3,L7-20).

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9. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Killy (US 4,396,143).

Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of a carton with scored convenience features, which also substantially encloses the contents. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the carton as taught by Killy for the purpose of forming an easy open and accessible package.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Littmann.

Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of laser to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

11. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view of Littmann.

In regard to claims 13,15 and 16, Rhodes discloses the invention as claimed including producing a carton substrate 31 over wrapping the carton substrate, with a film 29, such that the entire film is in a conforming relation with at least a portion of the carton, scoring a portion of the film proximate the convenience feature in the form of handles 26 and lid 22, wherein the scored portion of the film becomes part of the convenience feature, as it laminated on the substrate, the convenience features capable of being accessed by the user any of the contents, erecting the carton with the convenience features, filling the carton with items "C", such that each of the items are substantially bounded and concealed by the carton (see entire document).

What Rhodes does not disclose is the use of laser or die to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Rhodes with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claim 14, the modified invention of Rhodes discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 17 and 18, Rhodes discloses the invention substantially except for the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

12. Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Killy and in further view of Littmann.

In regard to claims 13 and 16, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap, while covering the entire carton 10 with the film (no number given), so that the film is in a conforming

relation with a portion of the carton, and singly scoring a portion of the film proximate the convenience feature, with the scored portion of the film becoming part of the convenience feature by being located directly adjacent and movable with the convenience feature which allows access to the convenience feature (see entire document).

What Williams does not disclose is the use of a formed carton, which is filled and has the shrink-wrapped scored. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L42).

Furthermore, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Bernard with the carton as taught by Killy and the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claim 14, the modified invention of Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However,

the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claim 15, Williams discloses the invention as claimed including accessing the convenience feature without removing any items from the carton.

In regard to claims 17 and 18, the modified invention of Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Bernard does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 19 and 20, Williams discloses the invention as claimed including scoring the film after it is on the carton (see C3,L7-20).

Response to Arguments

13. Applicant's arguments filed 4/5/2006 have been fully considered but they are not persuasive.

First, applicant defines the use of the term "register" as any substantial portion of the film corresponding to a portion of the carton that immediately underlies the film. Give the broadest reasonable interpretation of this definition, this can include a film

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bonded to a substrate prior to or after a packaging operation as well as a film, which is wrapped over a package after a packaging operation.

In claims 1 and 21, applicant argues that the prior art reference of Rhodes does not teach all of the limitations of the claim since there is no over-wrapping of the filled carton with a film. The examiner does not agree. First, the claimed method does not suggest, explicitly or implicitly, a specific order for packaging. "Unless the steps of a method actually recite an order, the steps are not ordinarily construed to require one." *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003). The claim currently can be interpreted in two ways. The first is where the carton is over-wrapped with plastic prior to filling. This is anticipated by Rhodes. The second interpretation is where the carton is filled and then over-wrapped with a film. This is anticipated by Williams, using Chapman as a teaching used to show applicant the use of a scored convenience feature. Furthermore, in both interpretations, the examiner disagrees with applicant's assertion that the film is not registered with a portion of the carton as they all have a substantial portion of the film corresponding to a portion of the carton that immediately underlies the film.

Applicant further argues that the teaching of Rhodes using the over-wrap for a different reason than applicant, since it is used for cooling and preventing leakage. The examiner is not persuaded with this argument. First, as stated above, there is a discrepancy in the intended order of the claims. Second, while Rhodes may use the film to insulate and seal the box, applicant's own wrapper being manufactured from a

polymer also exhibits these same properties to a certain degree. Furthermore, the claims as written is deemed to read on the reference of Rhodes.

In claims 13-18, applicant argues that the claims rejected under Rhodes and Littmann are allowable for the reasons indicated in the traversal of claims 1 and 21. The examiner does not agree for the reason stated above. Moreover, as also discussed above the traversal of the rejection of claims 13-20 using Williams and Chapman is also not persuasive. There is also sufficient motivation to utilize the teaching of Killy since it shows a package convenience feature being scored with a laser.

Therefore, for the reasons indicated above, the rejection is deemed proper.

Conclusion

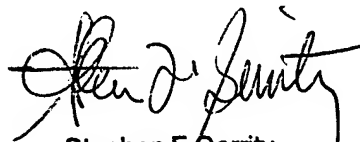
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
April 21, 2006



Stephen F. Gerrity
Primary Examiner